

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 928 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?no

2. To be referred to the Reporter or not? no

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? no

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

no

5. Whether it is to be circulated to the Civil Judge?  
no

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NEW INDIA ASSURANCE CO LTD

Versus

AMRAVATIDEVI HINCHNARAYAN  
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Appearance:

MR RAJNI H MEHTA for appellant.

Respondent No. 4 served.

Respondent No.3 deleted.

Mr.A.C. Rathod for respondents Nos. 1 and 2  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/02/97

#### ORAL JUDGEMENT

By means of the present appeal under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'), the New India Assurance Company Limited has challenged the judgment and award dated April 30, 1980, passed by the Motor Vehicles Claims Tribunal No.1, Ahmedabad (Rural), at Narol, in M.A.C. Petition No. 239 of 1976, whereby the Tribunal awarded compensation for a sum of Rs.60,800/- to the claimants, who are widow and daughter of deceased Hinchnarayan, who died in a vehicular accident on January 15, 1978.

Deceased Hinchnarayan was serving as driver in the Gujarat Police Force and, on the fateful day, i.e., on January 15, 1978, he was driving an ambassador car and was coming from Bhavnagar to Ahmedabad and at 6.15 p.m he was driving the ambassador car on Bavla-Sarkhej road. At that time, motor truck bearing RTO registration No. GTH 6542 driven by opponent No.1, belonging to opponent No.2, came from Ahmedabad side. The said motor truck was driven in rash and negligent manner so as to endanger the human life. The truck dashed with the Ambassador car as a result of which the deceased was thrown on the road and died on the spot. At the time of the accident, the deceased was aged about 30 years and was drawing monthly salary of Rs.463.80 ps. The claimants, i.e. widow and the minor daughter filed M.A.C. Petition No.239 of 1978 claiming compensation of Rs.65,000/- for the untimely death of the deceased which had taken place due to rash and negligent driving by the driver of the truck bearing No. GTS 6542. In the said claim petition, opponent No.2, who is the owner of the truck, and the Insurance Company, with whom the truck was insured, were also impleaded as party-opponents. Opponent No.2 appeared and filed written statement at Exh.13, inter alia, contending that the amount claimed is at the higher side and that the accident had not taken place due to rash and negligent driving by opponent No.1. Opponent No.3-Insurance company filed its written statement at Exh.19, inter alia, contending that, in any event, if the accident had taken place due to rash and negligent driving by opponent No.1, then liability of the Insurance Company is limited to Rs.50,000/-.

The Tribunal framed issues at Exh.14. After appreciating oral as well as documentary evidence, the Tribunal came to the conclusion that deceased Hinchnarayan died due to rash and negligent driving of truck No. GRS 6542 by opponent No.1. The Tribunal also came to the conclusion that the liability of the insurance company was limited to Rs.50,000/- per person and as a result of the aforesaid conclusion, the Tribunal awarded Rs.60,800/- to the claimants towards compensation with costs and interest at the rate of 6% per annum from the date of the application till realisation.

Learned advocate for the appellant-insurance company has contended that, as per the provisions of Section 95(2) (a) of the Act, liability of the insurance company is limited to Rs.50,000/- and the Tribunal has failed to apportion the awarded amount of compensation by not stating that the claimants were entitled to claim compensation from the insurance company to the extent of

Rs.50,000/-.

It is settled legal principle that liability of the insurance company is limited to Rs.50,000/- as per the decision rendered by the Supreme Court in the case of Motor Owners' Insurance Company Limited vs. Jadavji Keshavji Modi and others, reported in AIR 1981 Supreme Court 2059.

It is pertinent to note that at the time of admission of this appeal, the insurance company had filed Civil Application No. 2150 of 1980 for stay of execution and implementation of award under challenge. The Division Bench of this Court {Coram: P.D. Desai & S.B.. Majmudar, JJ (as they then were)} had ordered that liability of the insurance company to satisfy the award is to the extent of Rs.50,000/- and, therefore, the insurance company was directed to deposit Rs.50,000/with interest thereon at the rate of 6% per annum from the date of the application till the date of deposit with proportionate costs.

In view of this settled legal principle, the award of the Tribunal requires to be modified to the extent that, out of the awarded amount of Rs.60,800/-, liability of the insurance company is limited to Rs.50,000/-. The claimants are entitled to recover the remaining awarded amount of Rs.10,800/- from opponent nos. 1 and 2, who were driver and owner of truck bearing No.GTS 6542, jointly and severally. It is further clarified that the insurance company shall pay the amount of interest and proportionate costs on the amount of Rs.50,000/-. Opponents Nos. 1 and 2 shall pay jointly and severally Rs.10,800/- with interest thereon at the rate of 6% per annum from the date of the application till the date of deposit with proportionate costs. With this modification, the appeal is partly allowed with no order as to costs.

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(swamy)